



International Tribunal for the
Prosecution of Persons Responsible
for Serious Violations of International
Humanitarian Law Committed in the
Territory of the Former Yugoslavia
since 1991

Case No.: IT-04-74-T
Date: 10 December 2008
Original: ENGLISH
French

IN TRIAL CHAMBER III

Before: Judge Jean-Claude Antonetti, presiding
Judge Árpád Prandler
Judge Stefan Trechsel
Reserve Judge Antoine Kesia-Mbe Mindua

Registrar: Mr Hans Holthuis

Order of: 10 December 2008

THE PROSECUTOR

v.

**Jadranko PRLIĆ
Bruno STOJIĆ
Slobodan PRALJAK
Milivoj PETKOVIĆ
Valentin ĆORIĆ
Berislav PUŠIĆ**

PUBLIC

**ORDER ON MODALITIES OF THE HEARING OF EXPERT WITNESS
MILAN CVIKL**

The Office of the Prosecutor:

Mr Kenneth Scott
Mr Douglas Stringer

Counsel for the Accused:

Mr Michael Karnavas and Ms Suzana Tomanović for Jadranko Prlić
Ms Senka Nožica and Mr Karim A.A. Khan for Bruno Stojić
Mr Božidar Kovačić and Ms Nika Pinter for Slobodan Praljak
Ms Vesna Alaburić and Mr Nicholas Stewart for Milivoj Petković
Ms Dijana Tomašegović-Tomić and Mr Dražen Plavec for Valentin Ćorić
Mr Fahrudin Ibrišimović and Mr Roger Sahota for Berislav Pušić

TRIAL CHAMBER III (“Chamber”) of the International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia since 1991 (“Tribunal”),

SEIZED of Jadranko Prlić’s Submission of the Expert Report of Milan Cvikl, filed by Counsel for the Accused Prlić (“Prlić Defence”) on 10 October 2008 (“Submission”), to which two annexes are attached,

NOTING the economic expert report by Witness Milan Cvikl (“Witness”), filed pursuant to Rule 94 *bis* of the Rules of Procedure and Evidence (“Rules”) attached in annex to the Submission (“Expert Report”),¹

NOTING the Oral Decision of 20 October 2008, in which the Chamber requested that the Prlić Defence provide before 22 October 2008 documents regarding interviews between the Witness and Neven Tomić that served as the basis for the Expert Report (“Request of 20 October 2008”),²

NOTING the response to the Request of 20 October 2008, in which the Prlić Defence, at the hearing of 20 October 2008, informed the Chamber that it had no documents on the interviews between the Witness and Neven Tomić, but told the Chamber that it had requested the Expert Witness to submit a note on the methodology of the interviews that he conducted in order to compile his Expert Report,³

NOTING the Oral Decision of 30 October 2008, in which the Chamber denied the request of the Office of the Prosecutor (“Prosecution”) for disclosure of the Witness’s interviews with Neven Tomić within the scope of compiling the Expert Report,⁴

NOTING the email sent to the Chamber on 5 November 2008 by the Witness, in which he describes the methodology used to compile the Expert Report and states that

¹ Analysis of the Economic Measure & Developments in the HZ/HR HHB within the Context of the Economic Environment in Bosnia and Herzegovina from 1991-1994, October 2008.

² Oral decision of 20 October 2008, transcript in French (“T(F)”), pp. 33375 and 33376.

³ T(F), 20 October 2008, p. 33377.

⁴ Oral Decision of 30 October 2008 on the Prosecution motion to remove Neven Tomić from the Defence witness list or in the alternative to postpone his testimony while awaiting a more expansive 65 *ter* summary and disclosure of his interviews with Milan Cvikl, 30 October 2008, T(F) pp. 33983 and 33984 (“Oral Decision of 30 October 2008”).

he has no documents related to the interviews he conducted with different persons in order to compile the said Expert Report,⁵

NOTING the decision of 5 November 2008, in which the Chamber decided that the testimony of the Witness would be postponed to 12 January 2009 at the earliest,⁶

NOTING the Prlić Defence witness schedule dated 10 November 2008 indicating that the Prlić Defence plans to examine the Witness as of 12 January 2009 for four hours,⁷

NOTING the Notices by Counsel for the Accused Petković (“Petković Defence”), the Accused Praljak (“Praljak Defence”) and the Accused Stojić (“Stojić Defence”), filed with the Registry on 30 October,⁸ 6 November⁹ and 10 November 2008¹⁰ respectively, pursuant to Rule 94 *bis* (B) of the Rules, in which they inform the Chamber of their intention to cross-examine the Witness,

NOTING the Prosecution notice filed with the Registry on 26 November 2008, pursuant to Rule 94 *bis* (B) of the Rules, in which it challenges the relevance of the Expert Report, asks that the Chamber not admit certain of its extracts and requests to cross-examine the Witness,¹¹

CONSIDERING that Counsel for the Accused Ćorić and Pušić did not file a notice informing the Chamber of their intention to cross-examine the Witness,

CONSIDERING that the Prosecution submits that the Expert Report is limited to a study of “the economic or financial functioning of the local and regional authorities” and consequently, its relevance is marginal to this case,¹²

⁵ Performing the work involving discussion and interviews in preparation of “Analysis of the Economic Measure & Developments in the HZ/HR HHB within the Context of the Economic Environment in Bosnia and Herzegovina from 1991-1994”, 5 November 2008 (“Expert’s Note”).

⁶ Decision on Prosecution Motion to Postpone the Appearance of Defence Expert Witness Milan Cvikl, confidential, 5 November 2008.

⁷ Schedule of the Prlić Defence witnesses sent by email to the Chamber on 10 November 2008.

⁸ Notice by Milivoj Petković in relation to the Prlić Defence Expert Witness Milan Cvikl, 30 October 2008 (“Petković Notice”).

⁹ Slobodan Praljak’s Notice of Intent to Cross-Examine Jadranko Prlić’s Expert Witness Milan Cvikl, Jadranko Prlić’s Expert Witness Svetlana Radovanović and Bruno Stojić’s Expert Witness Dr Davor Marijan, 6 November 2008 (“Praljak Notice”).

¹⁰ Bruno Stojić’s Notice pursuant to Rule 94 (B) to Cross-Examine Prlić Defence Expert Witness Milan Cvikl, 10 November 2008 (“Stojić Notice”).

¹¹ Prosecution Notice Pursuant to Rule 94 (B) regarding the Accused Prlić’s Expert Witness Milan Cvikl, 26 November 2008 (“Prosecution Notice”).

¹² Prosecution Notice, para. 2.

CONSIDERING that the Prosecution objects to the admission of passages in the Expert Report based on the Witness's interviews with third parties¹³ and recalls that it did not have access to the written statements of these interviews,¹⁴

CONSIDERING that the Prosecution submits that the admission of any passages from the Expert Report based on interviews to which it did not have access would violate the provisions of Rule 92 *bis* of the Rules governing the rules that allow the admission, as evidence, of statements by persons who do not appear before the Chamber,¹⁵

CONSIDERING that in view of the upcoming testimony of the Witness, the Chamber must rule beforehand on the expert status of the said Witness whose testimony is scheduled for 12 to 15 January 2009,

CONSIDERING that the Chamber notes that the Prosecution Notice does not express its opinion concerning the expert status of the Witness,

CONSIDERING that after examining the Expert Report and the *curriculum vitae* of the Witness attached in annex to the Submission, the Chamber finds that the said Witness is, *prima facie*, entitled to testify as an expert on issues related to the state of the economy of the Republic of Bosnia and Herzegovina between 1991 and 1994, on the economic policies put into effect during this period by the HVO HZ HB and the HZ HB, and on the economic and financial functioning of the local and regional authorities,

CONSIDERING that owing to this fact, the Witness is authorised to testify as an expert and that the Prlić Defence will have four hours to conduct its examination-in-chief and possible re-examination,

CONSIDERING that the Chamber reminds the Prosecution that pursuant to Rule 94 *bis* (B) (iii) of the Rules, "the opposing party shall file a notice indicating whether it challenges the qualifications of the witness as an expert or the relevance of all or parts of the statement and/or report and, if so, which parts",

¹³ Prosecution Notice, para. 3.

¹⁴ Prosecution Notice, para. 3.

¹⁵ Prosecution Notice, para. 3.

CONSIDERING that in this case, the Prosecution did not specify the parts of the Expert Report that it challenges and merely indicates that all the parts of the Expert Report referring to or based on interviews conducted by the Witness with third parties may not be admitted,¹⁶

CONSIDERING that in the Oral Decision of 30 October 2008, the Chamber already denied the Prosecution request for disclosure of the interviews that the Witness conducted with Mr Neven Tomić in order to compile his Expert Report, on the ground that the Prlić Defence was unable to provide the Prosecution with statements of these interviews.¹⁷

CONSIDERING that subsequently, the Witness also made it known that he too was unable to provide statements of the interviews that he conducted to compile his Expert Report,¹⁸

CONSIDERING that in any case, the Chamber recalls that during the Prosecution's cross-examination it will be able to challenge the validity and relevance of the parts of the Expert Report based on the Witness's interviews with third parties and that the Chamber will rule on the admission of the Expert Report at the end of the Witness's testimony,

CONSIDERING next that in the absence of any specific and reasoned request regarding the time needed to conduct the cross-examination, the Chamber will adhere to its practice of allotting the Prosecution for its cross-examination 100% of the time allocated for the examination-in-chief and re-examination,¹⁹

CONSIDERING consequently that the Chamber decides that the Prosecution will have four hours to cross-examine the Witness,

CONSIDERING that with regard to the cross-examination conducted by the Praljak, Petković and Stojić Defence, the Chamber follows the same principle that in the absence of any specific and reasoned request pursuant to paragraph 16 of the Decision of 24 April 2008, it will adhere to the Chamber's practice of allotting to

¹⁶ Prosecution Notice, para. 3. "Accordingly, all parts of the Expert Report which refer to or are based on the Interviews are not admissible."

¹⁷ Oral Decision of 30 October 2008 and T(F) of the hearing of 20 October 2008, p. 33377.

¹⁸ Expert's Note.

CONSIDERING that the Chamber consequently decides that the Praljak, Petković and Stojić Defence will divide among themselves a time equivalent to two hours to conduct their cross-examination.

FOR THE FOREGOING REASONS,

PURSUANT TO Rules 89 (C), 90 (F) and 94 *bis* of the Rules,

DECIDES that Witness Milan Cvikl will testify before the Chamber as an expert witness from 12 to 15 January 2009,

DECIDES that the Prlić Defence shall have four hours to conduct the examination-in-chief and possible re-examination of Witness Milan Cvikl.

DECIDES that the Prosecution will have four hours to conduct its cross-examination of Witness Milan Cvikl,

AND

DECIDES that the Petković, Praljak and Stojić Defence will have a total of two hours to cross-examine Witness Milan Cvikl.

Done in English and in French, the French version being authoritative.

/signed/

Judge Jean-Claude Antonetti
Presiding Judge

Done this tenth day of December 2008

At The Hague

The Netherlands

[Seal of the Tribunal]

¹⁹ Decision Adopting Guidelines for the Presentation of Defence Evidence, 24 April 2008 (“Decision of 24 April 2008”), para. 14.